

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF OHIO

3 EASTERN DIVISION

4
5 -----) MDL No. 2804

6 IN RE: NATIONAL)

7 PRESCRIPTION OPIATE)

8 LITIGATION)

9 -----) Case No. 17-md-2804

10 THIS DOCUMENT RELATES TO:)

11 ALL CASES)

12 -----) Hon. Dan A. Polster

13
14 HIGHLY CONFIDENTIAL

15 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

16
17 VIDEOTAPED DEPOSITION OF

18 RANDY HEISER

19
20 February 19, 2019

21
22 Pittsburgh, Pennsylvania

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6 The videotaped deposition of RANDY HEISER,
7 called by the Plaintiffs for examination, taken
8 pursuant to the Federal Rules of Civil Procedure of
9 the United States District Courts pertaining to the
10 taking of depositions, taken before JULIANA F.
11 ZAJICEK, a Registered Professional Reporter and a
12 Certified Shorthand Reporter, at the offices of
13 Marcus & Shapira, LLP, Suite 3500, One Oxford Centre,
14 Pittsburgh, Pennsylvania, on February 19, 2019, at
15 9:02 a.m.
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I N D E X

WITNESS:

PAGE:

RANDY HEISER

EXAM BY MR. HUDSON..... 8

E X H I B I T S

HBC SERVICES-HEISER EXHIBITS

MARKED FOR ID

No. 1 Randy Heiser's LinkedIn Profile 11

No. 2 HBC Service Company's Second 34

Amended Responses to Plaintiffs'

(First) Set of Combined Discovery

Requests

No. 3 E-mail chain, top one dated 43

11/1/2010, Subject: RE: Pain mgt;

MCKMDL00512974 - 977

1 THE VIDEOGRAPHER: We are now on the record. My
2 name is Chris Ritona. I am the videographer for
3 Golkow Litigation Services.

4 Today's date is February 19th, 2019, and
5 the time is approximately 9:02 a.m.

6 This video deposition is being held in
7 Pittsburgh, PA at Marcus & Shapira, LLP, One Oxford
8 Centre, 35th Floor, In the Matter of National
9 Prescription Opiate Litigation, MDL No. 2804, Case
10 No. 17-md-2804, before the United States District
11 Court, Northern District of Ohio, Eastern Division.

12 The deponent today is Randy Heiser.

13 Will all counsel please identify
14 themselves for the record.

15 MR. HUDSON: Ty Hudson of Wagstaff & Cartmell
16 for the Plaintiffs.

17 MR. SCHWAB: John Schwab on behalf of Cardinal
18 Health.

19 MR. PAUL: Raj Paul of Covington on behalf of
20 McKesson.

21 MR. HYNES: Paul Hynes from Zuckerman Spaeder on
22 behalf of CVS and on behalf of the witness in his
23 capacity as a current employee of CVS.

24 MR. KOBRIN: Josh Kobrin of Marcus & Shapira on

1 behalf of HBC Service Company and the witness.

2 THE VIDEOGRAPHER: Thank you.

3 The court reporter today is Juliana
4 Zajicek and she will now please swear in the witness.

5 (WHEREUPON, the witness was duly
6 sworn.)

7 RANDY HEISER,
8 called as a witness herein, having been first duly
9 sworn, was examined and testified as follows:

10 EXAMINATION

11 BY MR. HUDSON:

12 Q. Good morning, sir.

13 Could you state your name, please?

14 A. Randy Heiser.

15 Q. And, Mr. Heiser, where do you currently
16 reside?

17 A. I currently reside at 5620 King School
18 Road in Bethel Park, Pennsylvania.

19 Q. Have you ever had your deposition taken
20 before?

21 A. Yes.

22 Q. How many times?

23 A. I think it's three prior to this.

24 Q. Okay. If you could, just briefly describe

1 what those cases involved?

2 A. One was with Rite Aid Corporation. I
3 believe it involved some type of pricing litigation,
4 but it was in the mid to early '90s. And I believe
5 there were two other situations where I was deposed
6 with Giant Eagle. One in a class action suit
7 concerning pricing with branded pharmaceuticals and I
8 think there was another deposition concerning some
9 type of a prescription issue.

10 Q. And do you recall, again, a ballpark for
11 those last two depositions, when those occurred?

12 A. I do not. It was sometime in my 15-year
13 career with Giant Eagle, but I don't recall. The --
14 the first one had to do with the class action suit
15 with pricing, I believe it was within the first five
16 years, but I don't know the exact timing.

17 Q. Okay. Well, it sounds like it has been a
18 while since you've had your deposition taken, right?

19 A. Correct.

20 Q. Okay. So before we get going, let's just
21 make sure we are on the same page.

22 You understand that you are under oath
23 just like we would -- you would be if you were in a
24 courtroom in front of a judge or a jury?

1 A. Yes, sir.

2 Q. And do you also -- will you also let me
3 know if I ask an unclear question so I can rephrase
4 it?

5 A. Sure.

6 Q. Okay. And is it fair that if you answer
7 my question that I can assume that you understood it?

8 A. Yes.

9 Q. And if you want to take a break at any
10 time, just let me know and we can go off the record.
11 Okay?

12 A. Okay.

13 Q. The only thing I would ask is just if
14 there is a question pending that you answer it before
15 we go off the record.

16 A. Okay.

17 Q. Is that fair?

18 A. Yes, sir.

19 Q. Okay. Tell me, what did you do to prepare
20 for the deposition today?

21 A. I spent a couple of hours yesterday with
22 this office talking to -- to attorneys.

23 Q. Did you do anything else?

24 A. No, sir.

1 Q. Did you look at any documents that
2 refreshed your recollection about any topics relating
3 to your time at Giant Eagle?

4 A. Yesterday, yes.

5 Q. Anything that sticks out that you recall?

6 MR. KOBRIN: Objection. We showed him certain
7 documents and I'm going to assert that the collection
8 of those documents is work product privilege. You can
9 ask him if he remembers anything, but I don't want you
10 to go too far beyond that.

11 MR. HUDSON: Yeah, that's what I'm asking him,
12 is what --

13 BY MR. HUDSON:

14 Q. Do you -- did that re --

15 MR. KOBRIN: Just yes or no.

16 BY MR. HUDSON:

17 Q. -- refresh your recollection?

18 A. Yes.

19 Q. If we could, just shift gears. I'm going
20 to mark here as Exhibit 1 a print-off off of LinkedIn.

21 (WHEREUPON, a certain document was
22 marked HBC - Heiser Deposition
23 Exhibit No. 1, for identification, as
24 of 02/19/2019.)

1 BY MR. HUDSON:

2 Q. Does this look like your CV or resume? Or
3 I would -- not sure of the right term to use, but your
4 information from LinkedIn relating to your
5 professional career?

6 A. It seems to be correct.

7 Q. Okay. And there on the second page of
8 Exhibit 1 it lists your education?

9 A. That is correct.

10 Q. Okay. Did you obtain a degree from The
11 Wharton School?

12 A. I did not. Those were certificate
13 programs for week-long educational classes.

14 Q. Okay. And then how about Shenandoah
15 University?

16 A. Yes, I have a Doctor of Pharmacy from
17 Shenandoah University.

18 Q. And then if we go back to the first page,
19 does this accurately describe your professional
20 experience?

21 A. Yes.

22 Q. And this indicates that you spent 16 years
23 at Giant Eagle as the VP of Pharmacy?

24 A. Well, the math doesn't -- the math is not

1 correct. It is 15 years.

2 Q. Oh.

3 A. '96 to 2011.

4 Q. Okay.

5 A. And the math is not correct with McKesson.

6 That was not two years. If you can start in '12 and

7 leave in '13, it is not going to be two years.

8 Q. Right. No, I understand that. I -- I --

9 my guess is that's probably something on LinkedIn

10 where they --

11 A. It could -- could be how they calculate

12 it, but --

13 Q. -- do the math based on the months or

14 something. But anyway...

15 A. -- but these positions are correct. The

16 timing is not correct.

17 Q. Yeah, the -- the ballpark?

18 A. The positions are correct.

19 Q. Right. Okay. 15, 16 years at Giant

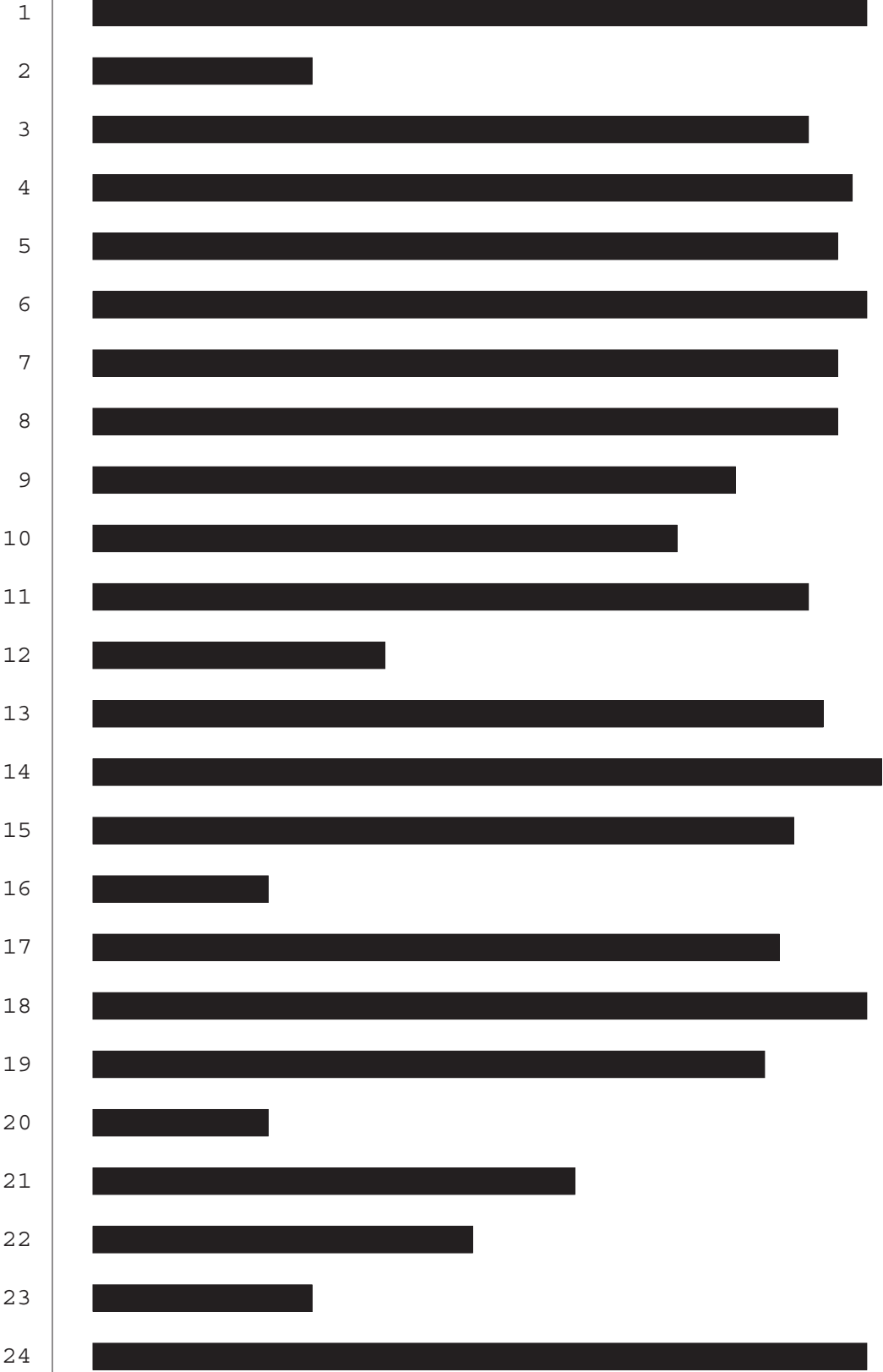
20 Eagle.

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1 the license is HBC Service Company.

2 Do you have any recollection of -- you
3 know, or involvement in that decision-making that the
4 licensee for that -- or the -- or the -- the name on
5 the license was HBC as opposed to Giant Eagle?

6 MR. KOBRIN: Object to form.

7 BY THE WITNESS:

8 A. I -- I don't recall how that was decided.
9 I'm assuming it was a combination of legal and
10 distribution people making that decision.

11 BY MR. HUDSON:

12 Q. Were -- did you play any role in -- in
13 that decision?

14 A. Not that I recall.

15 Q. And is it your recollection that HBC
16 started acting as a distributor of Schedule III, IV
17 and V controlled substances in around November
18 of 2009?

19 Does that sound about right?

20 A. That sounds about right.

21 Q. Okay. And then you left Giant Eagle at
22 some point in 2011, correct?

23 A. Correct. October of 2011.

24 Q. So -- so Giant -- or HBC acted as a

1 distributor of controlled substances for a little less
2 than two years while you were still there?

3 A. That's -- well, I don't recall when we
4 actually brought the controls in. I know that we
5 started with generics and then my recollection is at
6 some point we added the controls. That dating sounds
7 about correct, but I don't recall the exact date.

8 Q. Sure, sure.

9 And the records will reflect what they
10 were. And, again, I'll -- I'll represent to you that
11 they show that -- that the -- the controlled substances started
12 in -- in about November of 2009 --

13 A. Okay.

14 Q. -- so...

15 During that time period, do you have any
16 recollection of whether or not HBC designed a system
17 to identify suspicious orders of controlled
18 substances?

19 A. We had an integrated system in place to
20 monitor the movement of all controls. It started as
21 we received product from the warehouse. It was
22 scanned and electronically recorded. When it was
23 placed on the shelves, again, it was scanned and
24 electronically recorded. When it was dispensed or

1 when it was -- an order was picked based upon a
2 store's order, it was scanned and electronically
3 recorded. When the totes were placed in a truck, it
4 was scanned and electronically recorded. When those
5 delivery vehicles arrived at the Giant Eagle location,
6 the totes were scanned and electronically recorded.
7 When the merchandise was unpacked, it was, again,
8 scanned and electronically recorded. When we
9 dispensed the product through our dispensing system,
10 the product was scanned and electronically recorded.
11 When we gave the medicine to the patient, it went
12 through our cash register, it was scanned and
13 recorded.

14 We also had corporate oversight of both
15 the stores and the warehouse. The warehouse had
16 buyers that were monitoring from a human perspective
17 the orders that were placed by the stores and also the
18 orders that were placed to the manufacturers. The
19 system to monitor the store activity involved our
20 pharmacists who are required to on a monthly basis
21 compare dispensing activity to purchase activity,
22 identify discrepancies, and try to find out what
23 those -- why those discrepancies occurred.

24 Our district managers were responsible to

1 verify that that analysis of dispensing activity
2 versus purchasing activity was being conducted
3 properly. And our vice president of pharmacy
4 operations was responsible to see that our district
5 managers were performing those particular follow-ups.

6 So we had a -- a fully integrated system
7 of controls in place to be sure that we were trying to
8 detect and prevent any type of theft or diversion.

9 Q. My question was more specific. My
10 question was: Did HBC design a system to identify
11 suspicious orders of controlled substances?

12 So my question is what -- to you, what is
13 a suspicious order of a controlled substance?

14 A. I mean, we -- me -- our integrated system
15 looked for, you know, any -- any types of -- of
16 deviations. Our focus was on theft and the -- you
17 know, ways to -- to get it -- get it out if anyone was
18 taking it out of the system.

19 The buyers were looking at, you know,
20 orders as they were coming in. So if someone, you
21 know, was on -- if they saw something that came in and
22 they said they wanted 40 pieces and they have never
23 ordered 40 pieces, they would typically call to see if
24 it was a -- a fat finger situation or if the system,

1 you know, somehow made a computer error and set that
2 order up and it should have been four rather than 40.
3 You know, that's, you know, an example of something
4 that, you know, might be considered suspicious.

5 Q. Do you -- but do you have a definition of
6 a suspicious order? In other words, during -- and let
7 me be more specific about that.

8 During the time that you were at Giant
9 Eagle and Giant Eagle was considering becoming a
10 distributor of controlled substances, was one of the
11 things that Giant Eagle looked at is trying to design
12 a system specifically focused on suspicious orders?

13 MR. KOBRIN: Object to form.

14 BY THE WITNESS:

15 A. Well, I think -- I mean, the integrated
16 system that I described is in place to identify any
17 type of suspicious orders or theft or diversion.

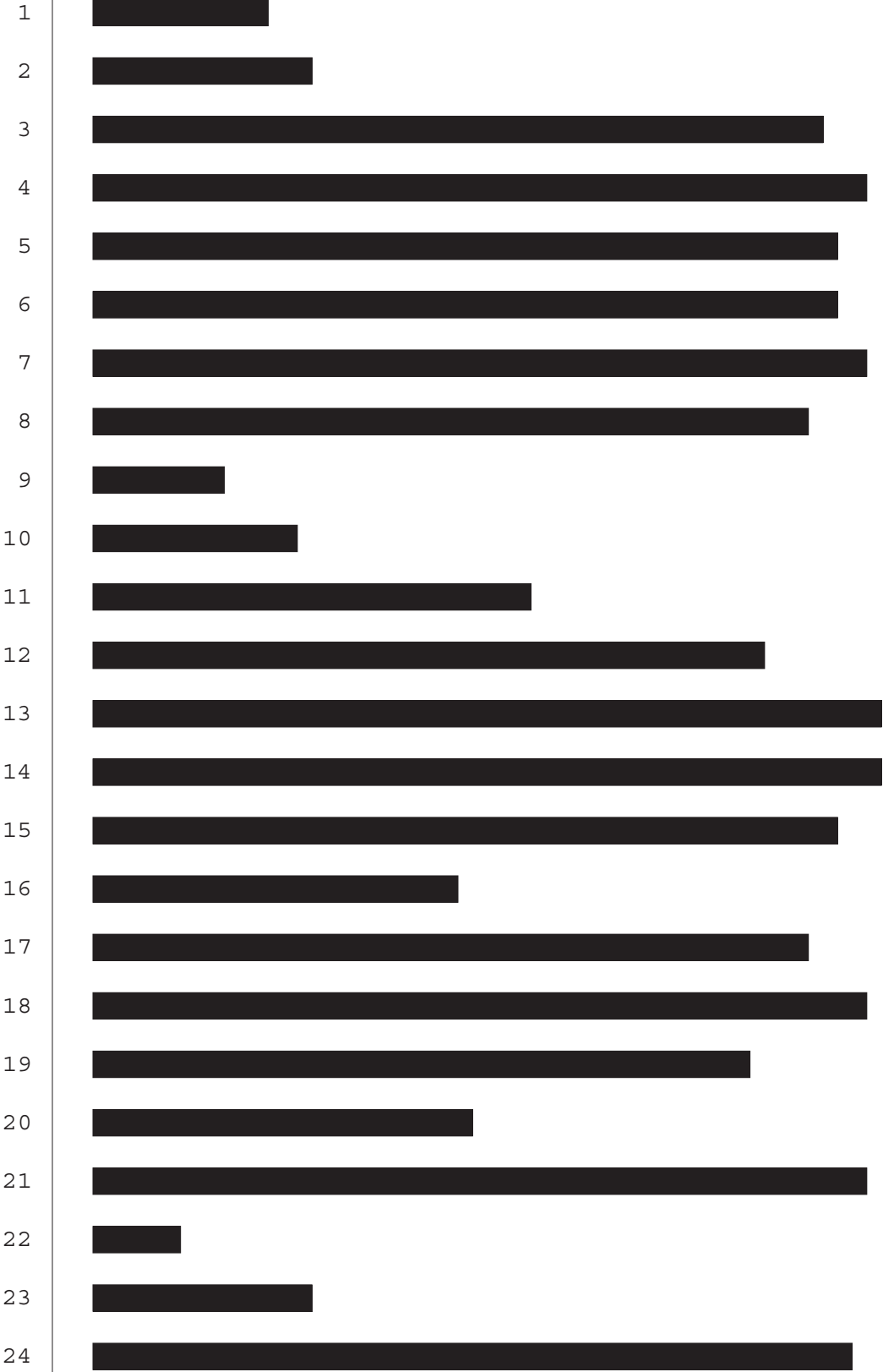
18 BY MR. HUDSON:

19 Q. Okay. And so in your mind, what is a
20 suspicious order?

21 MR. KOBRIN: Object to form, asked and answered.

22 THE WITNESS: Am I supposed to answer that?

23 MR. KOBRIN: I'll tell you -- if you are not
24 meant to answer it, I will definitely say stop, hold



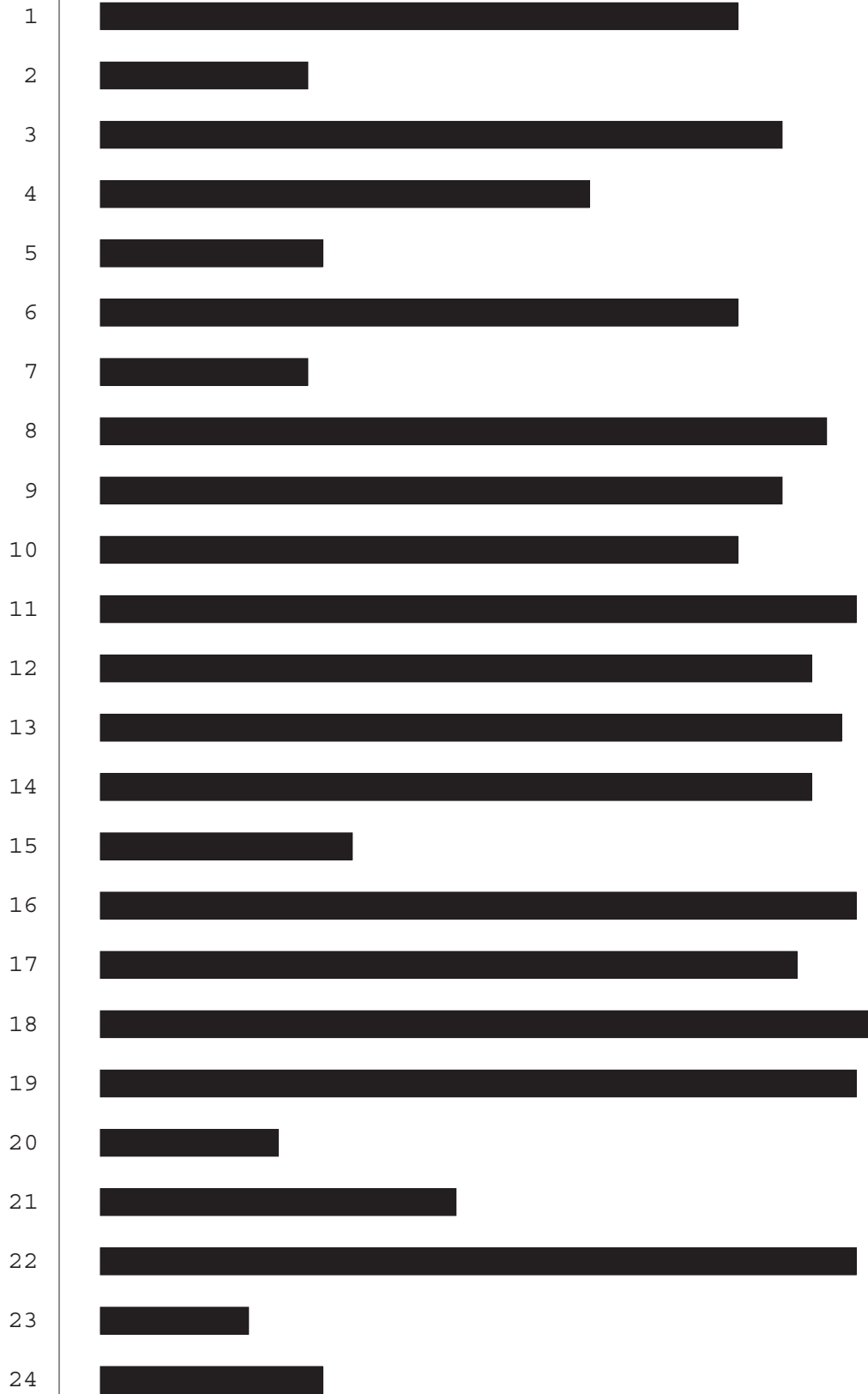
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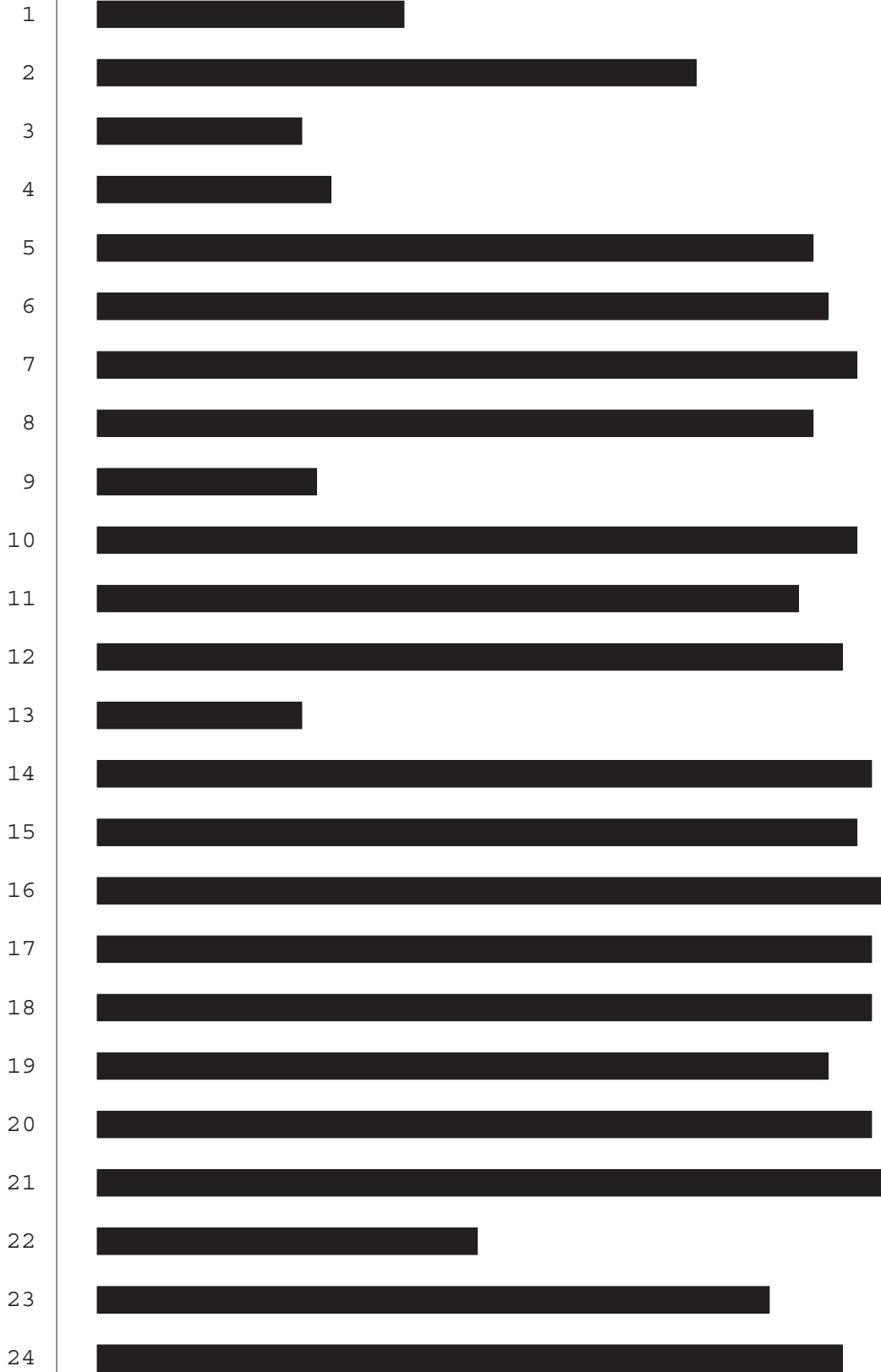
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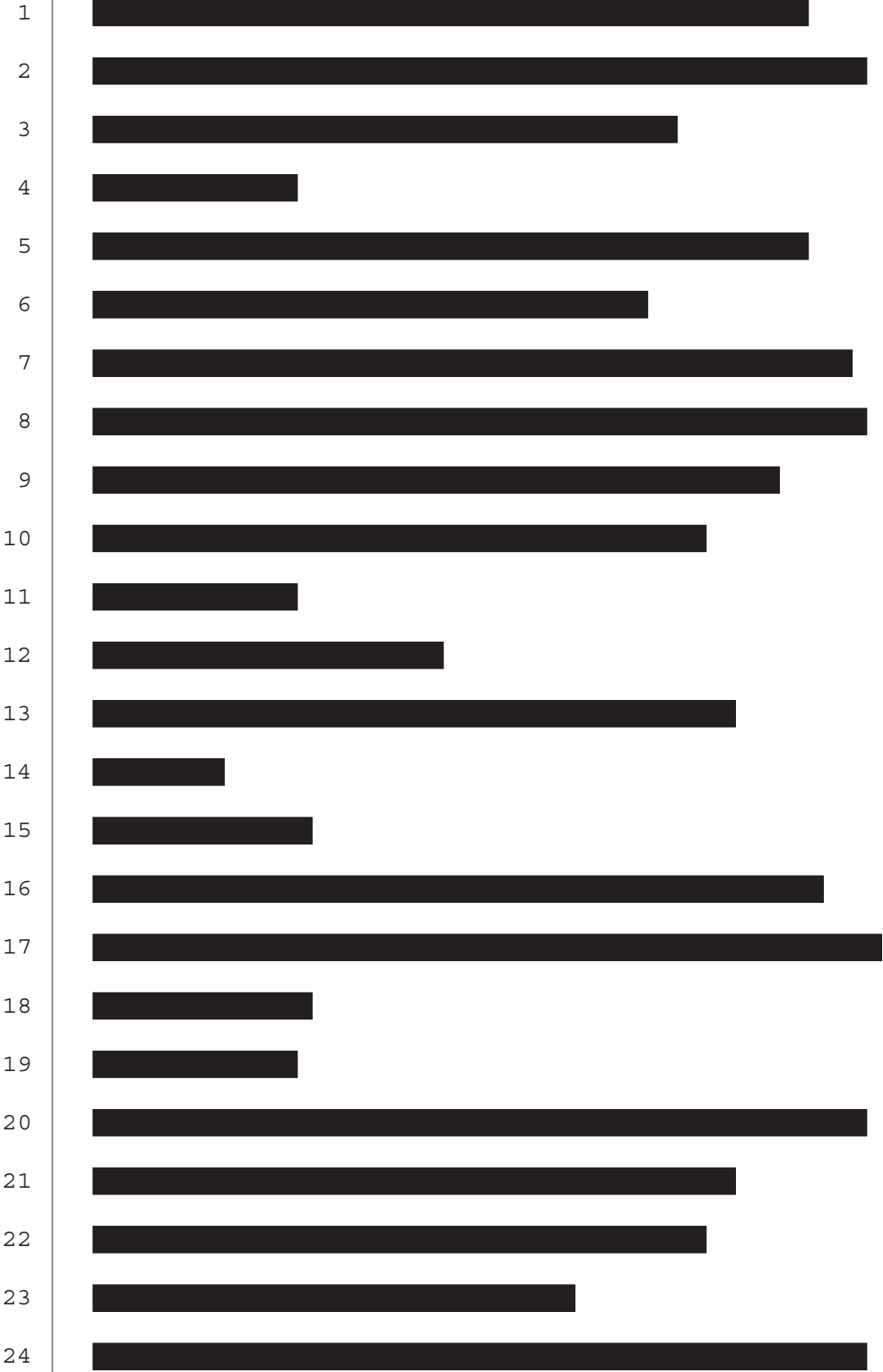




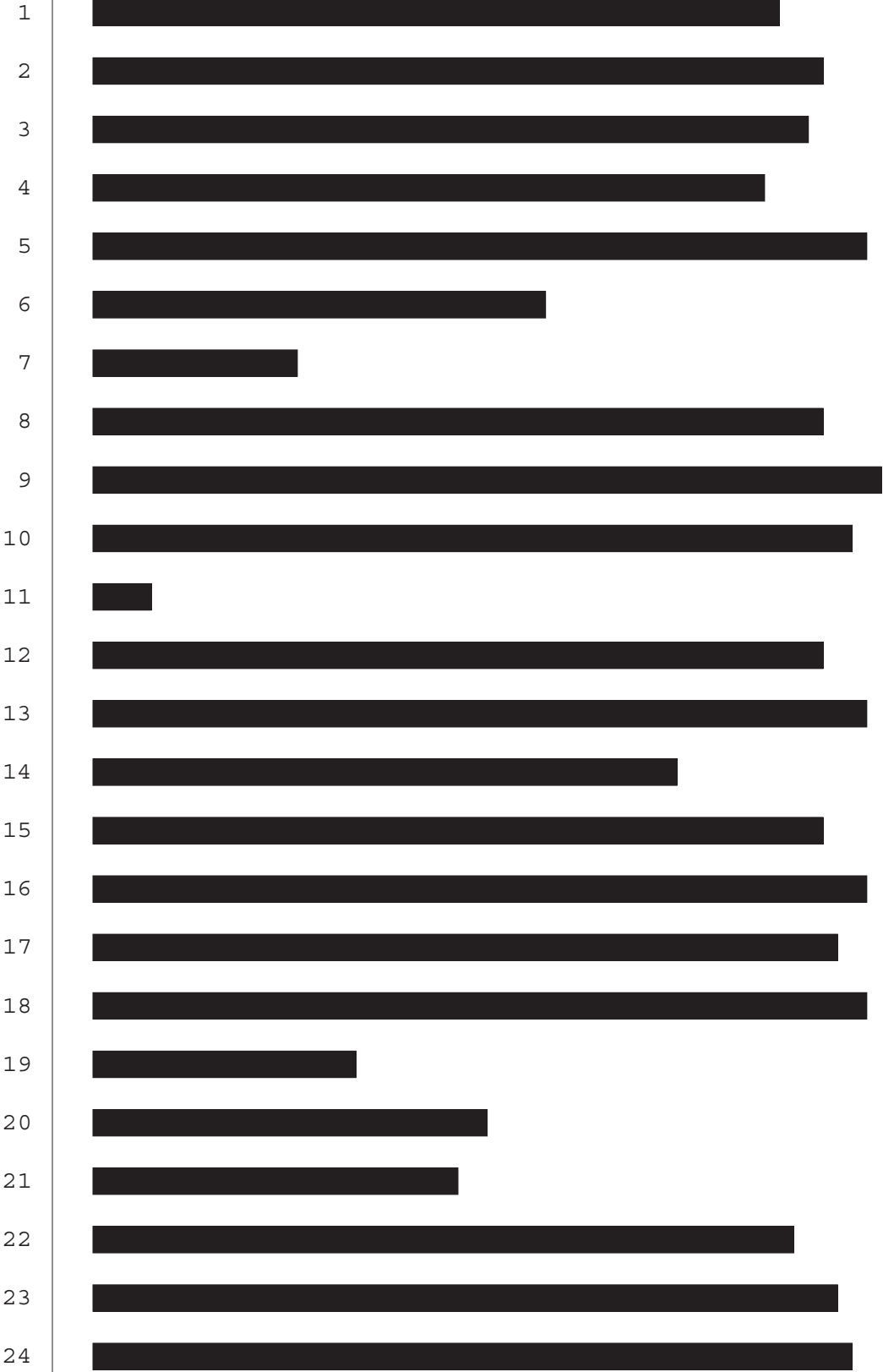












1 10, the companies responded, and do you see at the
2 bottom of Page 9, the first written policy identified
3 is there at that Bates range and then it says it's
4 effective from 8/1 of 2014.

5 Do you see -- do you see that at the
6 bottom?

7 A. I see the sentence: "Apparent version of
8 HBC policy effective 8/1 of 2014."

9 Q. Okay. And then if we look to the next
10 page, I think you'll see that the rest of the written
11 policies identified become later, you know, later in
12 time as opposed to earlier in time.

13 My -- my -- given that the company has
14 identified the first written policy as being
15 August 1st of 2014, my question is simply: Do you
16 have any recollection of any written policies or
17 procedures relating to suspicious order -- a
18 suspicious order monitoring system that were in effect
19 prior to August 1st of 2014?

20 A. I mean, I think I've already described
21 these integrated systems that were in place to monitor
22 the movement of all products throughout the Giant
23 Eagle supply chain.

24 Q. And can you say under oath today whether

1 or not that integrated system had components that were
2 specifically designed to identify suspicious orders of
3 controlled substances?

4 MR. KOBRIN: Object to form.

5 BY THE WITNESS:

6 A. I think I've already described how the
7 system was in place to -- to monitor the movement and
8 to identify anything that was out of line.

9 BY MR. HUDSON:

10 Q. Right. And as part of that, do you know
11 as you sit here today whether or not that involved
12 monitoring and identifying orders of controlled
13 substances of unusual size?

14 MR. KOBRIN: Object to form, asked and answered.

15 BY THE WITNESS:

16 A. I -- I think I've already answered the
17 fact that we had people at a corporate level that were
18 monitoring the orders that were sent from the store to
19 the HBC warehouse. Those buyers were also monitoring
20 the orders that were sent from the warehouse to the
21 manufacturers.

22 BY MR. HUDSON:

23 Q. So who -- who at corporate was monitoring
24 orders of controlled substances to identify those of

1 unusual size?

2 MR. KOBRIN: Object to form.

3 BY THE WITNESS:

4 A. I think I already -- I already stated they
5 were -- they were pharmacy buyers that were
6 responsible for monitor -- monitoring those orders.

7 BY MR. HUDSON:

8 Q. And who were the pharmacy buyers, what
9 were their names?

10 A. I don't recall.

11 Q. What did the pharmacy buyers do to monitor
12 the orders to try to identify those of unusual size?

13 A. They are -- they are looking at the orders
14 that came from the pharmacies before they actually
15 submit their orders into the manufacturers.

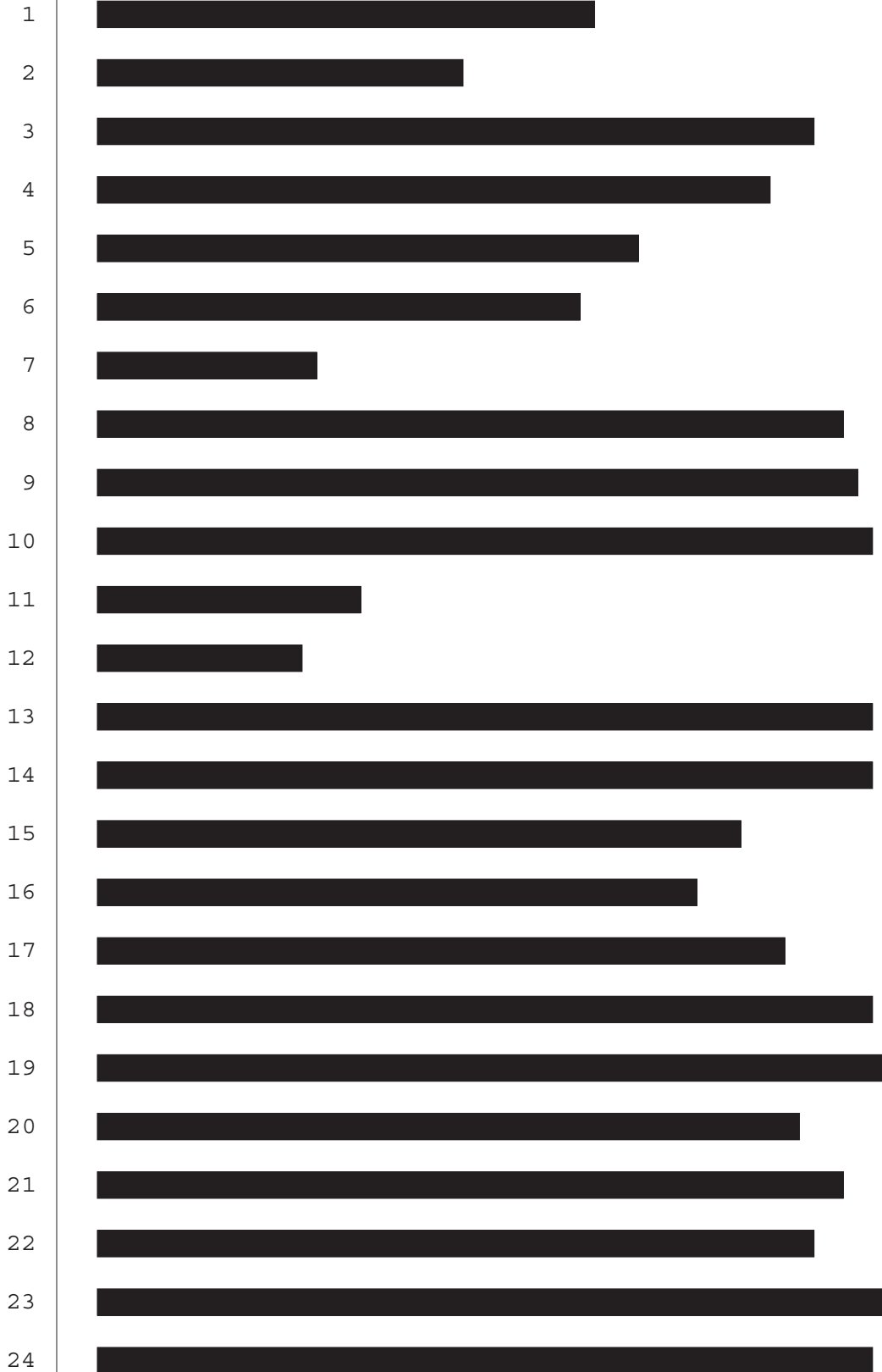
16 Q. How often did they review those orders?

17 A. I don't recall.

18 Q. Well, what was the criteria being applied
19 to try to determine whether it was an order of unusual
20 size?

21 A. I don't recall.

22 Q. How many orders did the pharmacy buyers
23 identify during the time that you were there that --
24 that were identified as being potentially suspicious



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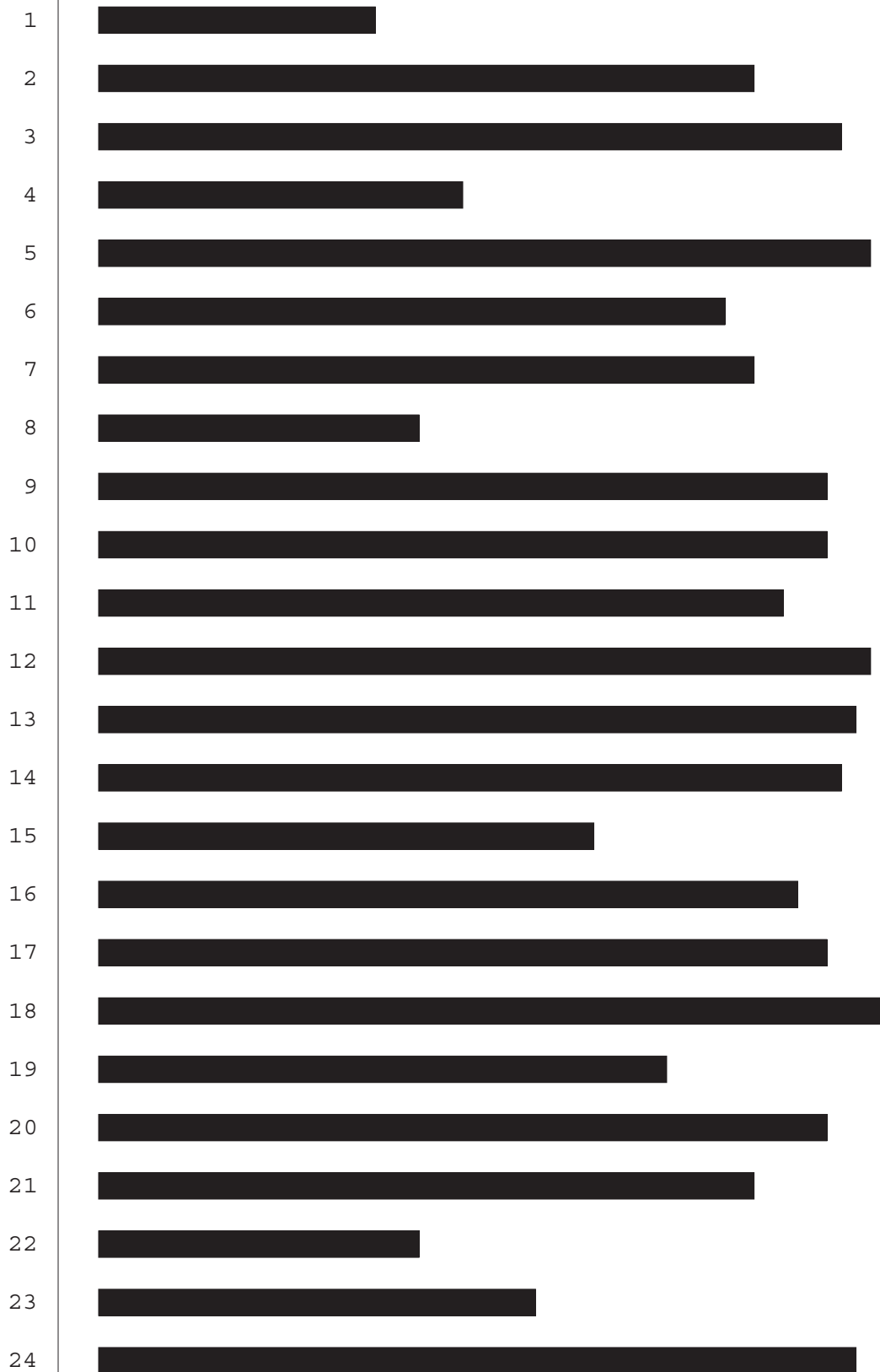




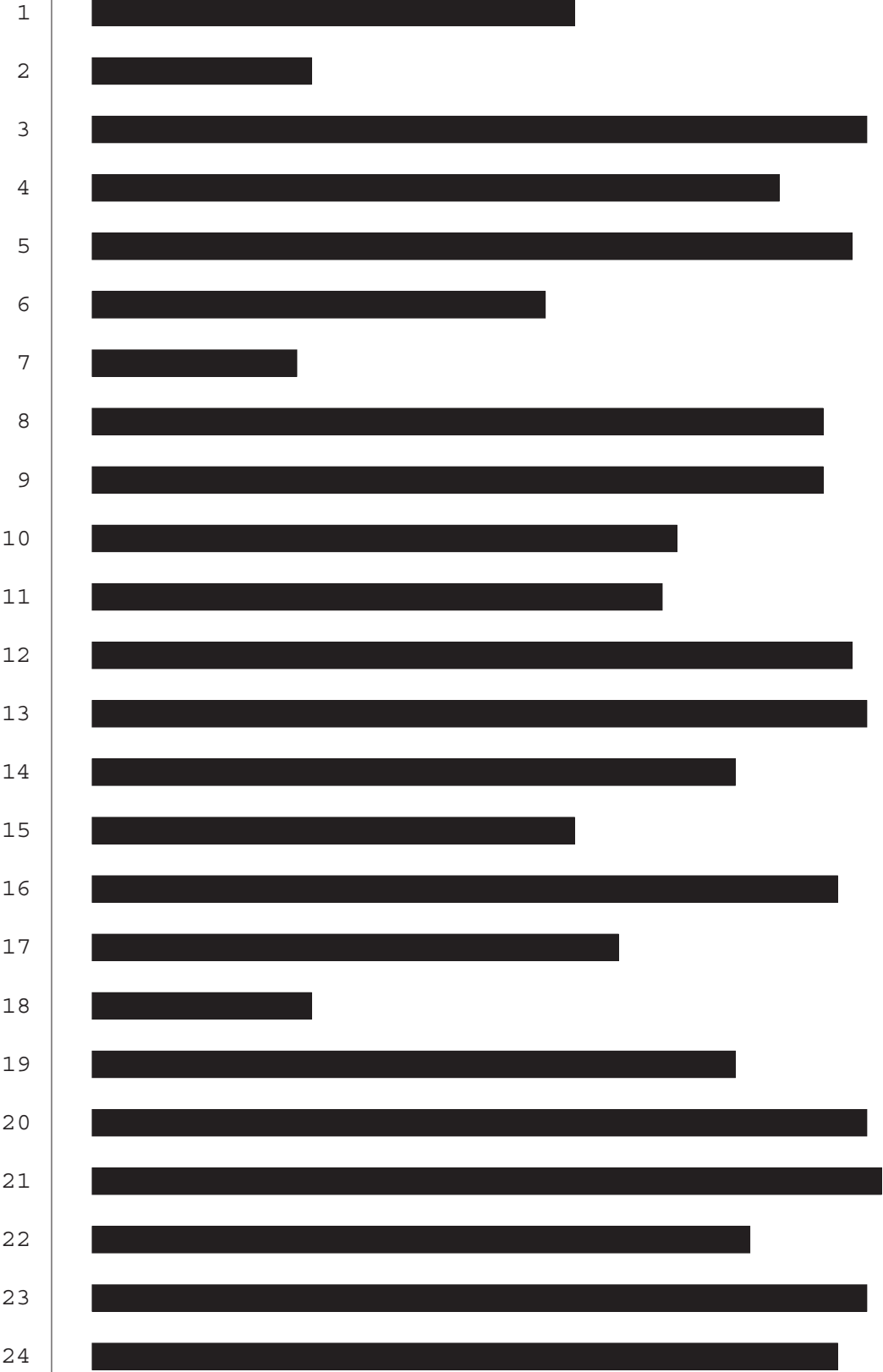
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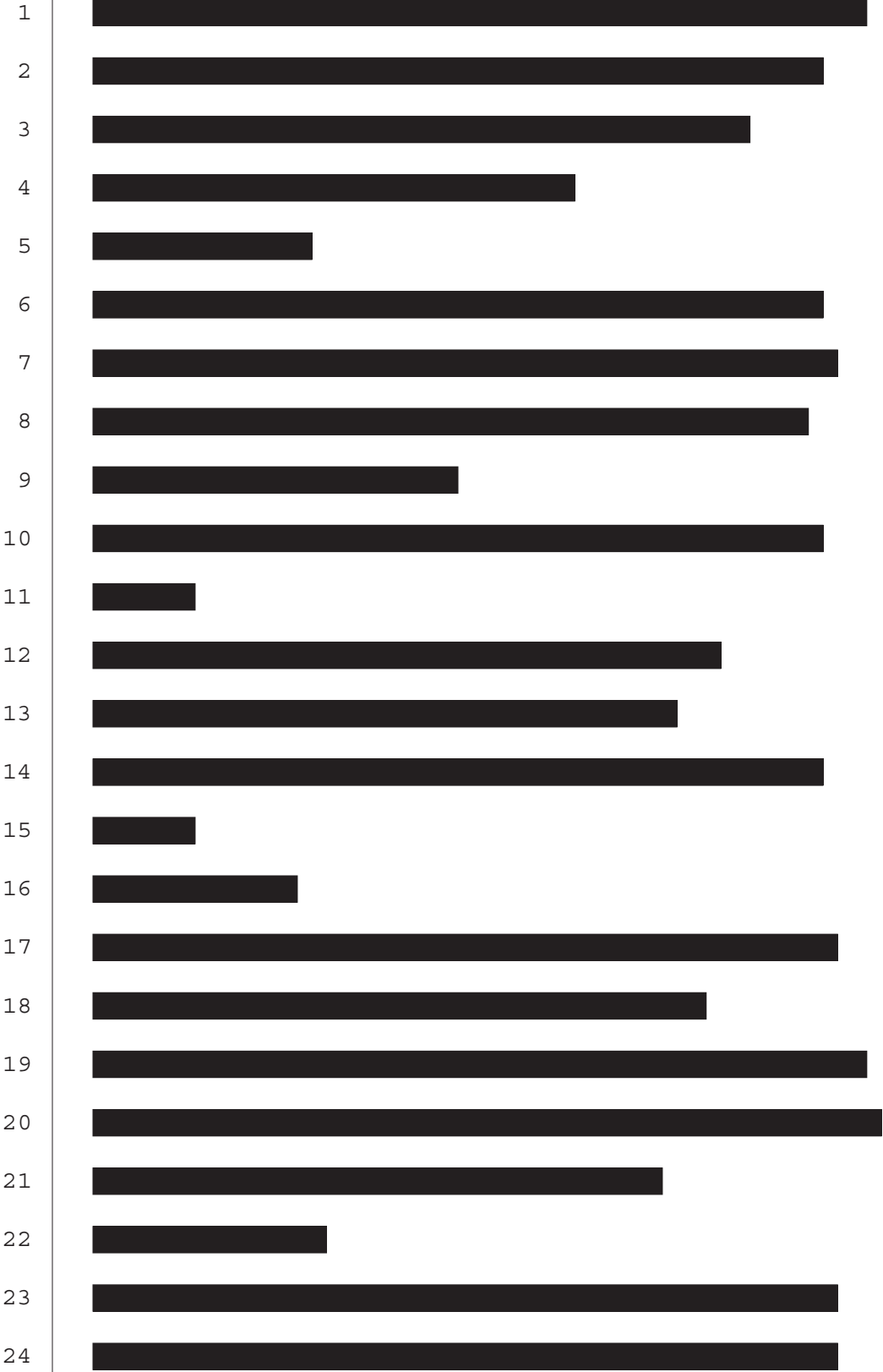




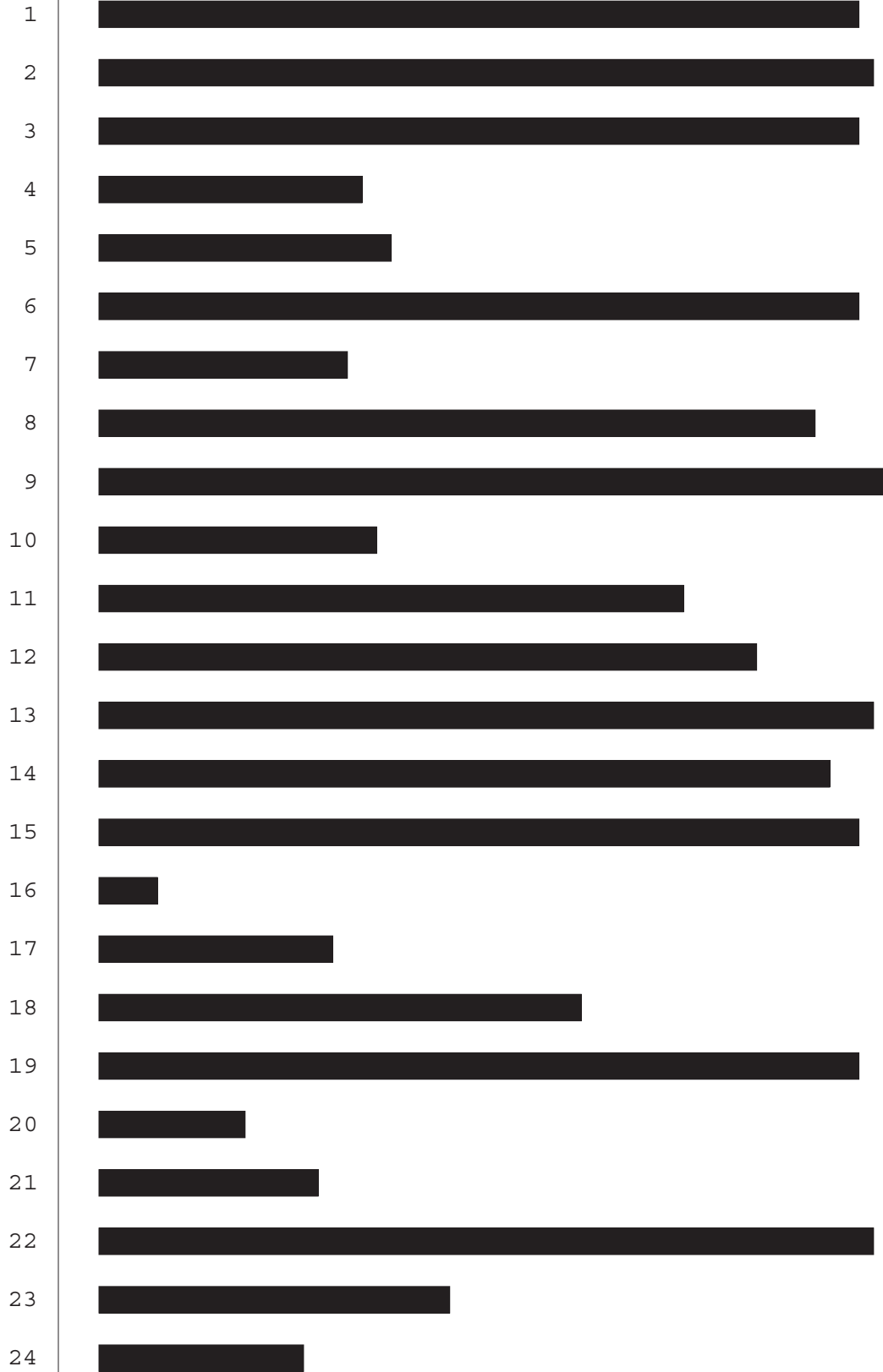




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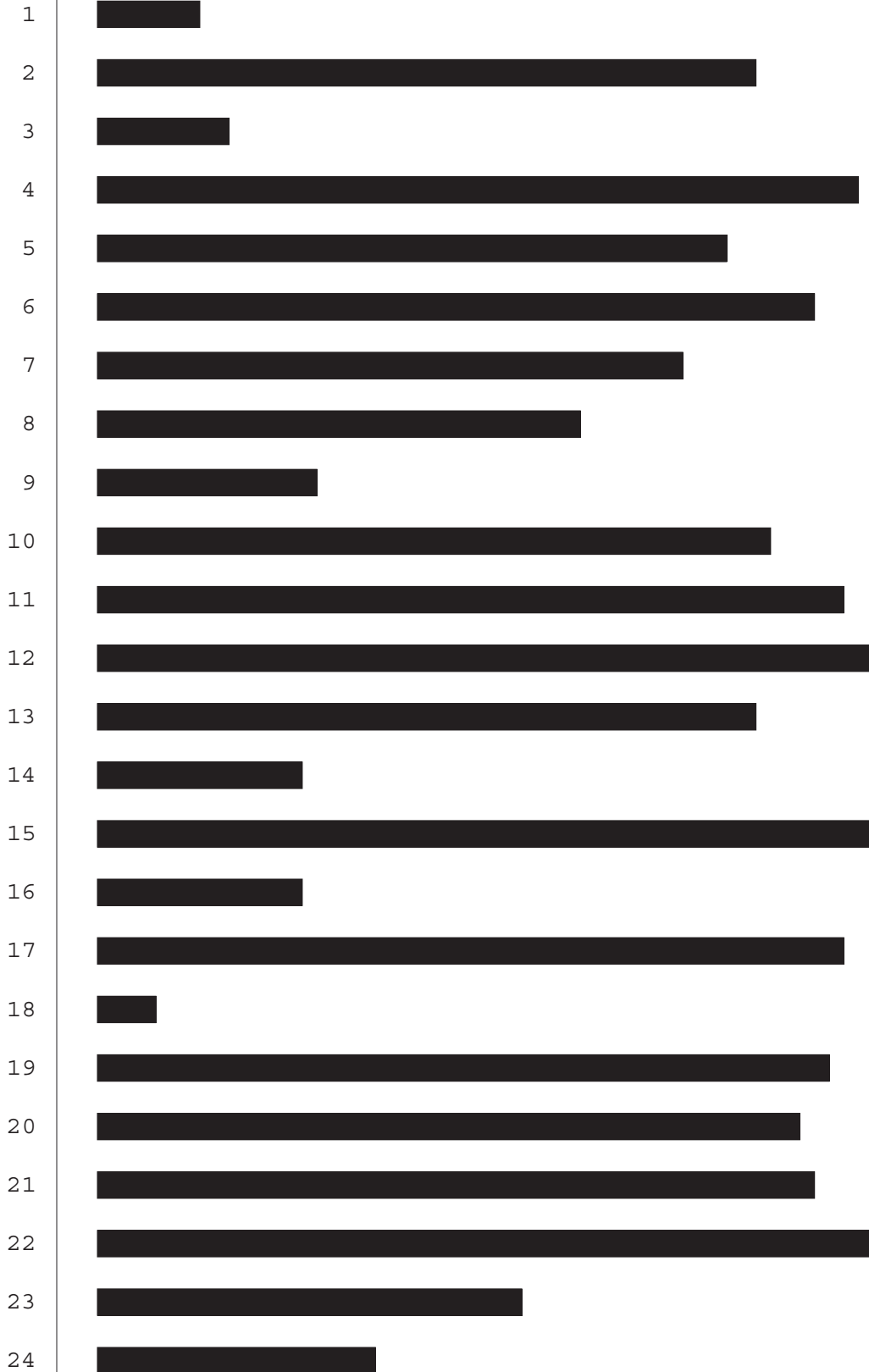






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12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Q. After you left Giant Eagle, you joined
16 McKesson?

17 A. Correct.

18 Q. And what was your role there?

19 A. My role was Director of National Accounts
20 Six Sigma.

21 Q. And it looks like you stayed in that role
22 a little less than two years?

23 A. It was less -- it was actually less than a
24 year.

1 Q. Okay. Less than a year.

2 And then why did you leave McKesson?

3 A. It just was not a good fit. My position
4 was to look for cost savings between the national
5 accounts and McKesson and it was very numbers and
6 commodity driven and it was not a good fit for me. I
7 need to be around people.

8 Q. And then what did you do after you left
9 McKesson?

10 A. I started working for CVS as a pharmacist.

11 Q. And is your job just to be a pharmacist at
12 a specific pharmacy?

13 A. I'm currently a pharmacy manager at a
14 specific pharmacy south of Pittsburgh in McKeesport,
15 Pennsylvania.

16 Q. And then prior to that you were in -- out
17 of -- a pharmacist in Masontown, Pennsylvania?

18 A. Correct. Masontown, I was a staff
19 pharmacist there.

20 Q. And what does that mean, staff pharmacist?

21 A. I wasn't the pharmacy manager.

22 Q. Okay. How many pharmacists are there at
23 your current pharmacy in McKeesport?

24 A. One-and-a-half.

1 Q. You being the one?

2 A. Me being the one.

3 MR. HUDSON: Okay. I think that's all I've got.

4 No further questions. Thanks.

5 MR. KOBRIN: Can we just take a quick break.

6 I'm not going to have very much redirect either.

7 THE VIDEOGRAPHER: 10:35, we are off the record.

8 (WHEREUPON, a recess was had

9 from 10:35 to 10:42 a.m.)

10 THE VIDEOGRAPHER: 10:42, we are on the video
11 record.

12 MR. KOBRIN: We have no additional questions.

13 THE VIDEOGRAPHER: 10:42, we are off the video
14 record. This concludes the video deposition.

15 (Time Noted: 10:42 a.m.)

16 FURTHER DEPONENT SAITH NAUGHT.

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REPORTER'S CERTIFICATE

I, JULIANA F. ZAJICEK, C.S.R. No. 84-2604,
a Certified Shorthand Reporter, do hereby certify:

That previous to the commencement of the
examination of the witness herein, the witness was
duly sworn to testify the whole truth concerning the
matters herein;

That the foregoing deposition transcript
was reported stenographically by me, was thereafter
reduced to typewriting under my personal direction and
constitutes a true record of the testimony given and
the proceedings had;

That the said deposition was taken before
me at the time and place specified;

That I am not a relative or employee or
attorney or counsel, nor a relative or employee of
such attorney or counsel for any of the parties
hereto, nor interested directly or indirectly in the
outcome of this action.

IN WITNESS WHEREOF, I do hereunto set my
hand on this 19th day of February, 2019.

JULIANA F. ZAJICEK, Certified Reporter

DEPOSITION ERRATA SHEET

Case Caption: In Re: National Prescription
Opiate Litigation

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I
have read the entire transcript of my Deposition taken
in the captioned matter or the same has been read to
me, and the same is true and accurate, save and except
for changes and/or corrections, if any, as indicated
by me on the DEPOSITION ERRATA SHEET hereof, with the
understanding that I offer these changes as if still
under oath.

RANDY HEISER

SUBSCRIBED AND SWORN TO

before me this day
of , A.D. 20__.

Notary Public

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RANDY HEISER

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RANDY HEISER